

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0956**

William J. Benzick, et al.,
Respondents,

vs.

Palm Properties LLC,
defendant,

Michael N. Palm,
Appellant.

**Filed March 25, 2019
Affirmed in part, reversed in part, and remanded
Cochran, Judge**

Hennepin County District Court
File No. 27-CV-09-22816

James C. Brand, Marie E. Williams, Fredrikson & Byron, P.A., Minneapolis, Minnesota
(for respondents)

Michael N. Palm, Sr., Wayzata, Minnesota (pro se appellant)

Considered and decided by Hooten, Presiding Judge; Reyes, Judge; and Cochran,
Judge.

UNPUBLISHED OPINION

COCHRAN, Judge

Appellant Michael N. Palm challenges an order entered by the district court that
(1) requires two limited liability companies (LLCs) that he wholly owns to make all

payments owed to him directly to respondent-judgment-creditors William J. Benzick and Perry Rynders (the creditors), and (2) requires the LLCs to make monthly financial disclosures to the creditors. The order was entered to effectuate a charging order against Palm's interest in the LLCs. We affirm in part, reverse in part, and remand.

FACTS

On August 26, 2010, the creditors obtained a judgment in the amount of \$264,821.91 against Palm Properties LLC, and appellant Michael N. Palm, jointly and severally. The judgment was docketed on October 4, 2010. The judgment was related to two loans that Palm Properties received from the creditors, which Palm personally guaranteed. Palm Properties defaulted on the loans, causing the creditors to bring a district court action against both Palm and Palm Properties.

The creditors made efforts to collect from Palm but were unsuccessful in collecting the full judgment. On February 6, 2018, in an effort to collect the unsatisfied portion of the judgment, the creditors brought a motion seeking a charging order under Minn. Stat. § 322C.0503, subd. 1 (2018),¹ against Palm's transferrable interest in two LLCs that he wholly owns, GREC, LLC and GSR Real Estate Services, LLC.²

The creditors also asked the district court to make additional orders under Minn. Stat. § 322C.0503, subd. 2 (2018), which gives the court the authority to make orders necessary to effectuate a charging order. The creditors asked the court to order that *all*

¹ A charging order is a lien on a judgment debtor's interest in an LLC. Minn. Stat. § 322C.0503, subd. 1. It requires the LLC to pay any distribution that would otherwise be paid to the judgment debtor to the judgment creditor instead. *Id.*

² GREC and GSR are not parties to this case.

payments due from GREC or GSR to Palm, not solely distributions, be paid directly to them. They also asked the court to order GREC and GSR to disclose financial information—specifically, complete financial statements, a balance sheet, income statements, cash-flow statements, bank-account statements, and statements of all payments made to or for the benefit of Michael Palm—by the tenth day of every month until the judgment is satisfied. They argued that these additional orders were necessary because Palm was the sole owner of both GREC and GSR and could characterize distributions from the LLCs as other forms of payment to avoid making payments directly to the creditors.

Palm objected to the creditors' request that the court order all payments made by GREC and GSR be paid to the creditors. He argued that Minn. Stat. § 322C.0503 (2018) limits the payments that a judgment creditor may receive under a charging order to distributions only and that there are other available means of garnishing his wages from the LLCs. Palm also argued that the financial disclosures that the creditors sought were too burdensome and that he could not comply with the timeline that the creditors suggested.

On April 18, 2018, the district court granted the creditors' motion for a charging order. The court also ordered GREC and GSR to make "any payments currently owed to, or that become payable in the future to, Michael N. Palm directly to" the creditors until the judgment is satisfied. Finally, the district court ordered GREC and GSR to make the financial disclosures requested by the creditors by the tenth day of each month until the judgment is satisfied.

This appeal by Palm follows.

DECISION

This appeal involves the district court's application of Minn. Stat. § 322C.0503 to effectuate a charging order against Palm's interest in GREC and GSR. Palm does not dispute that his interests in GREC and GSR are properly subject to a charging order under Minn. Stat. § 322C.0503, subd. 1. Instead, he argues that the district court exceeded its authority under Minn. Stat. § 322C.0503, subd. 2, by (1) ordering that all payments, not just distributions, owed to Palm be paid directly to the creditors and (2) ordering the LLCs to make monthly financial disclosures to the creditors.

The statutory language at issue, Minn. Stat. § 322C.0503, subd. 2(2), provides that the district court may "make all other orders necessary to give effect to the charging order." Because the statute gives the district court broad discretion in making orders necessary to effectuate a charging order, we review the contested orders for an abuse of discretion. See *Personalized Mktg. Serv., Inc. v. Stotler & Co.*, 447 N.W.2d 447, 450 (Minn. App. 1989) ("Where a trial court has made a ruling which calls for an exercise of discretion, the clear abuse of discretion standard of review applies, and the rulings should not be disturbed unless a clear abuse is shown."), *review denied* (Minn. Jan. 12, 1990). A district court abuses its discretion when its decision is based on an erroneous view of the law or its decision is inconsistent with the facts in the record. *In re Stisser Grantor Trust*, 818 N.W.2d 495, 508 (Minn. 2012).

1. The district court abused its discretion by ordering that all payments made by GREC or GSR to Palm, not just distributions, be paid directly to the creditors.

Minnesota law allows a judgment creditor to apply for a charging order against a judgment debtor's transferable interest in an LLC for the unsatisfied amount of the judgment. Minn. Stat. § 322C.0503, subd. 1. "A charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited liability company to pay over to the person to which the charging order was issued *any distribution* that would otherwise be paid to the judgment debtor." *Id.* (emphasis added).

By its terms, Minn. Stat. § 322C.0503, subd. 1, provides that a charging order requires payment of "any distribution." *Id.* A "distribution" is a transfer of money or property from an LLC to another person on account of a transferable interest in the LLC. Minn. Stat. § 322C.0102, subd. 7 (2018). A "transferable interest" in an LLC is the right to receive distributions from the LLC in accordance with the operating agreement. Minn. Stat. § 322C.0102, subd. 28 (2018).

The charging order statute, Minn. Stat. § 322C.0503, is substantively identical to a similar provision of the Revised Uniform Limited Liability Company Act (Nat'l Conf. of Comm'rs on Unif. State Laws 2006) (RULLCA). *Compare* Minn. Stat. § 322C.0503 *with* RULLCA § 503.³ The comment to section 503 of the RULLCA provides guidance as to the scope of a charging order under the act. The comment expresses that payments that are

³ The Minnesota Revised Uniform Limited Liability Company Act (MRULLCA), Minn. Stat. §§ 322C.0101-.1205 (2018), is an adaptation of the RULLCA.

not distributions are not subject to a charging order and are instead subject to other creditor remedies that may apply. RULLCA § 503 cmt.

Here, the district court's order requires GREC and GSR to make "any payments currently owed to, or that become payable in the future to, Michael N. Palm directly to" the creditors. The phrase "any payments" goes beyond "distributions" and is broad enough to encompass other types of payments, including salary payments, compensation for services, or other forms of payment that are not distributions. The order's requirement that "any payments" owed to Palm be paid to the creditors is inconsistent with the charging order language set forth in Minn. Stat. § 322C.0503, subd. 1, because the order is not limited to "distributions."

The creditors argue that the district court acted within its discretion because Minn. Stat. § 322C.0503, subd. 2, authorizes the district court to "make all other orders necessary to give effect to the charging order" to "the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subdivision 1." The creditors maintain that, under the circumstances presented to the district court, it was reasonable and necessary to order any payments, not just distributions, be paid to the creditors to effectuate the charging order. The creditors assert that, without this provision, Palm would be able to "mask" distributions as other forms of payments that are not subject to a charging order because Palm alone owns and controls both LLCs. They contend that the district court's order "avoided the need for subsequent litigation over [a]ppellant's characterization of payments."

To support their argument that the order crafted by the district court was not an abuse of its discretion, the creditors cite *PB Real Estate, Inc. v. DEM II Props.*, 719 A.2d 73 (Conn. App. Ct. 1998).⁴ In *PB Real Estate*, the Connecticut trial court granted a charging order in creditor PB Real Estate’s favor against two individual debtor defendants’ interests in an LLC that the debtors wholly owned. 719 A.2d at 74. The district court’s order directed the LLC to pay PB Real Estate “present and future shares of any and all distributions, credits, drawings, or payments due to the defendant[s] . . . until the judgment is satisfied in full.” *Id.* PB Real Estate later applied for a “turnover order,” alleging that the LLC made payments to the debtor defendants in violation of the charging order. *Id.* The LLC and the individual defendants claimed that the payments were compensation for legal services that the debtors provided, akin to wages, and were not subject to a charging order. *Id.* at 74-75. After an evidentiary hearing, the trial court found that the payments were, in fact, distributions that were subject to the charging order and that the payments to the defendants were made in violation of the charging order. *Id.* at 75. The Connecticut Appellate Court affirmed the trial court’s turnover order, holding that the evidence supported the trial court’s finding that the payments were distributions and that Connecticut’s limited liability statutes did not preclude a finding that the payments were distributions subject to a charging order merely because they were not disbursed under certain procedures within the LLC. *Id.* at 75-76.

⁴ *PB Real Estate* is a Connecticut decision that is not binding precedent on this court. See *Mahowald v. Minn. Gas Co.*, 344 N.W.2d 856, 861 (Minn. 1984) (indicating that foreign caselaw is not binding precedent).

While *PB Real Estate* illustrates the creditors' legitimate concern that Palm may have the ability to mask payments to circumvent the charging order, the facts in this case differ from those in *PB Real Estate*. In *PB Real Estate*, the Connecticut Appellate Court addressed the trial court's characterization of *specific* payments that were allegedly made in violation of an *existing* charging order. The Connecticut Appellate Court did not address whether payments other than distributions could also be subject to a charging order.⁵

Here, unlike in *PB Real Estate*, there was no existing charging order that was allegedly violated. Instead, in this case, the district court issued a charging order and, at the same time, also required that all payments owed now or in the future from the LLCs to Palm must be paid directly to the creditors until the judgment is satisfied. But, the creditors are only entitled to distributions under Minn. Stat. § 322C.0503. And, the district court did not find that all payments due to Palm would be distributions or that requiring the LLCs to make all payments directly to the creditors was otherwise "necessary" to effectuate the collection of distributions.

⁵ It is also noteworthy that the Connecticut Appellate Court remarked on the broadness of the trial court's original charging order in *PB Real Estate*:

The trial court observed that the phrase, "distributions, credits, drawings, or payments due" in the charging order may be broader than the definition of a member's limited liability company interest in General Statutes § 34-101(10), "a member's share of the profits and losses of the limited liability company and a member's right to receive distributions of the limited liability company's assets. . . ." The court restricted the scope of the turnover order to payments found to have been "distributions."

PB Real Estate, 719 A.2d at 74 n.3.

The facts in the record only establish that it is possible that Palm could attempt to circumvent the charging order by abusing his position as owner of the LLCs and mischaracterizing distributions as other forms of payment. This possibility by itself is not sufficient to conclude that the LLCs will not comply with the charging order and pay over any distributions that would otherwise be paid to Palm. To the extent that the LLCs fail to comply with the charging order in the future, the creditors can bring a subsequent action as did the creditor in the *PB Real Estate* case.

Because the district court's order regarding the payments to be made by the LLCs is inconsistent with Minn. Stat. § 322C.0503, and was not necessary to effectuate the charging order, the district court abused its discretion by requiring GREC and GSR to make all payments, not just distributions, due to Palm directly to the creditors. We reverse this provision of the district court's order and remand to the district court to modify the order in a manner consistent with this opinion.

2. The district court did not abuse its discretion by ordering GREC and GSR to provide monthly financial disclosures to the creditors.

Palm also challenges the district court's decision to order GREC and GSR to provide monthly financial statements to the creditors. The district court ordered GREC and GSR to disclose “(1) complete financial statements, including a balance sheet, an income statement, and a cash flow statement for the previous month; (2) bank statements reflecting all account activity for the previous month; and (3) a statement of all payments made to or for the benefit of Michael N. Palm” to the creditors by the tenth day of each month until the judgment is satisfied.

Citing Minn. Stat. § 322C.0502, Palm argues that a charging order does not entitle the creditors to access financial information. Minn. Stat. § 322C.0502, subd. 1(3)(ii) provides that the transfer of a transferable interest does not entitle the transferee to have access to records or other information concerning the company's activities. A charging order, however, constitutes a *lien* on the transferrable interest—it does not transfer the interest to the creditor. Minn. Stat. § 322C.0503, subd. 1. Because there has been no transfer of Palm's transferrable interest, Minn. Stat. § 322C.0502 does not apply.

Instead, Minn. Stat. § 322C.0503, subd. 2, is the applicable statutory provision. As discussed above, subdivision 2 provides that the district court may make orders necessary to effectuate a charging order. The record supports the district court's determination that the financial disclosures are necessary to effectuate the charging order. The creditors made other unsuccessful efforts to collect the judgment from Palm prior to seeking this charging order. Given that the LLCs subject to the charging order are wholly owned by Palm and the creditors experienced problems collecting from Palm in the past, it was reasonable for the district court to conclude that an order requiring the LLCs to provide financial information was necessary to monitor compliance and effectuate collection of distributions under the charging order. The requirement that the LLCs provide financial information addresses the creditors concern that Palm could mask payments without overreach into payments that the creditors are not entitled to under Minn. Stat. § 302C.0503, subd. 1, and is narrowly tailored to monitor compliance with the charging order and effectuate the collection of distributions. Because the facts in the record support the district court's conclusion that an order requiring the LLCs to provide financial information to the

creditors is necessary to effectuate the charging order, the district court did not abuse its discretion when it ordered financial disclosures by the LLCs.

In sum, the district court did not abuse its discretion when it required the LCCs to make monthly financial disclosures to the creditors until the judgment is satisfied, but it did abuse its discretion when it required that all payments made by the LLCs to Palm, not just distributions, be paid directly to the creditors.

Affirmed in part, reversed in part, and remanded.